

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GRAHAM-BINGHAM IRREVOCABLE
TRUST, a Washington Trust,

Plaintiff,

v.

JOHN HANCOCK LIFE INSURANCE
COMPANY USA,

Defendant.

C10-1185Z

MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) Defendant John Hancock Life Insurance Company (U.S.A.)'s motion for summary judgment, docket no. 37, is GRANTED in part and DENIED in part as follows:

(a) Defendant's motion is GRANTED as to plaintiff's fraud claim, and plaintiff's second cause of action is DISMISSED in part with prejudice to the extent it asserts a claim other than violation of Washington's Consumer Protection Act ("CPA");

(b) Defendant's motion is GRANTED as to plaintiffs' breach of contract claim, plaintiffs' third cause of action is DISMISSED with prejudice, and plaintiffs' sixth cause of action for rescission is DISMISSED with prejudice to the extent it is based on a breach of contract theory;

(c) Defendant's motion is GRANTED as to plaintiffs' securities law claim, and plaintiffs' fourth cause of action is DISMISSED with prejudice;

1 (d) Defendant's motion is GRANTED as to plaintiffs' breach of insurance
2 law claim, and plaintiffs' fifth cause of action is DISMISSED in part with prejudice to
the extent it asserts a private right of action for violation of RCW Title 48; and

3 (e) Defendant's motion for summary judgment is otherwise DENIED.

4 (2) Plaintiff Graham-Bingham Irrevocable Trust's motion for partial summary
5 judgment, docket no. 43, is GRANTED in part and DENIED in part as follows:

6 (a) The Court HOLDS as a matter of law that defendant John Hancock Life
Insurance Company (U.S.A.) violated RCW 48.102.100(1)(c) when it failed to include
7 with the lapse warning notice issued on December 21, 2009, or with the lapse warning
reminder notice issued on January 21, 2010, the notice of alternative transactions
8 required by the statute; and

9 (b) Plaintiff's motion is otherwise DENIED.

10 (3) In light of these rulings, the parties should be prepared to proceed to trial on the
11 following claims: (i) violation of the CPA (second cause of action); and (ii) the tort of bad
faith (or breach of the duty of good faith) (fifth and sixth causes of action). The Court will
issue a separate order explaining its rulings.

12 (4) Pursuant to Local Rule CR 51, counsel are directed to meet and confer
13 concerning jury instructions and to jointly provide a set of agreed instructions, as well as a
set of disputed instructions. The Court will provide counsel, via e-mail, a set of the Court's
14 standard instructions. Counsel need not submit any of these instructions, unless counsel have
specific objections and wish to propose alternatives. After filing their agreed and disputed
15 jury instructions via CM/ECF, counsel are requested to also provide them, via e-mail, in
either WordPerfect or Word format.

16 (5) The Clerk is directed to send a copy of this Minute Order to all counsel of
17 record.

18 Filed and entered this 14th day of October, 2011.

19 WILLIAM M. McCOOL, Clerk

20 s/ Claudia Hawney
21 By _____
22 Claudia Hawney
23 Deputy Clerk
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